

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. Henley Graves
Resident Judge

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

January 3, 2005

N440
Robert W. Warrington
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

**RE: State of Delaware v. Robert W. Warrington
Defendant ID No. 0008014970(R-1)**

Dear Mr. Warrington:

The Defendant filed his first Motion for Postconviction Relief on March 3, 2004. It is 53 pages in length and raises numerous allegations. The Court expanded the record pursuant to Rule 61(g) and received submissions from the Defendant's trial attorney, the Defendant and the State. On October 28, 2004, the Court conducted an evidentiary hearing to assure that everyone had an opportunity to put forth their respective positions and to expose Defendant's trial counsel to examination and cross-examination as to the Defendant's allegations. A second evidentiary hearing took place on December 9, 2004. This decision is necessarily based on credibility determinations as to those issues where witnesses do not agree.

FACTUAL BACKGROUND

The Defendant was convicted of murder in the first degree and was sentenced to life without parole. Additionally, he was convicted of possession of a deadly weapon during the commission of a felony and conspiracy. His brother and co-defendant, Andrew Warrington, was convicted of the same

offenses. The Defendant's conviction was affirmed on appeal. Warrington v. State, 840A.2d 590 (Del. 2003) The Supreme Court reviewed the evidence in a light most favorable to the Defendant in stating the factual background of its decision. The Court basically concluded that even if the victim had come to the Defendants' dwelling and was the initial aggressor, and even if the victim threatened the Defendant with a knife, there came a point in time that the victim was overpowered and was helpless. At that time, when the victim was no longer a threat to either of the Defendants, and when the Defendants had complete control over the situation, they intentionally killed him.

The evidence established that the victim was able to break free of the Defendants and briefly secure himself in a room on the first floor of the dwelling. While there, he used a portable house phone to call 911, but before he could communicate anything, the Defendants broke through the door, causing the phone to be knocked aside. The Defendants were unaware that a 911 connection had been made. The 911 tape recording evidences pleas by the victim for help, his confusion as to why they were killing him, and his prayers when he knew he was dying. The tape also evidences the continued beating he received while he was defenseless. Whether or not this homicide was premeditated, or whether events took place as the Defendants testified concerning the victim being the initial aggressor, it is clear, as I stated at sentencing, that the Defendants made the decision to kill, to commit cold-blooded murder.

Robert Warrington was represented by private counsel up until his conviction. He then fired his attorney and a conflict attorney was appointed for both the sentencing and appeal. Andrew Warrington was represented by the Public Defender's Office for both the trial and the appeal. The defense teams cooperated, exchanged information and worked on a common defense strategy that was consistent with both Defendants then and present theory of the defense.

The appeal of both cases involved the same single issue. Both Defendants claimed that once

the right of self-defense was triggered due to an aggressor being in their dwelling, then that right continues and the Defendant had a "license to kill" even after the intruder has been totally subdued. The Supreme Court did not accept that argument and held that if an intruder has been disabled so as to no longer pose a threat, then the continued use of deadly force is not justifiable. The Supreme Court upheld this Court's instruction stating same.

Mr. Warrington raises 25 claims as to why he should receive a new trial. The majority of his claims are claims of ineffective assistance of trial and appellate counsel. The ineffective assistance claims are not procedurally barred. The procedural bars as to the other claims will be discussed with each individual claim.

INEFFECTIVE ASSISTANCE OF COUNSEL

Claims of ineffective assistance of counsel require that the movant establish deficient performance on the part of his attorney which prejudiced the Defendant. The movant must establish a reasonable probability that but for his attorney's unprofessional errors, there exists a reasonable probability that the result of the trial would have been different. A reasonable probability is a probability sufficient to undermine the confidence of the outcome of the trial. Strickland v. Washington, 466 U. S. 668 at 687 and 694 (1984). The movant must establish both deficient performance and prejudice in order to present a successful claim of ineffective assistance of counsel. Simply put, if movant fails to establish either the prejudice prong or the deficient performance, then the claim fails. Movant's allegations as to deficient performance on the part of his attorney must be concrete and specific. Conclusory allegations do not support a claim. Younger v. State, Del. Supr., 580 A.2d 552 (1990).

CLAIM #1 - SUPPRESSION

Defendant complains that his attorney was ineffective in the effort to have his statement

suppressed. The statement was exculpatory as to the homicide, but contained collateral untruths that haunted the Defendant at trial. The Defendant argues that his statement was a key piece of evidence used by the prosecution in casting doubt as to his own testimony.

In this case, trial counsel moved to suppress Defendant's statement based upon the allegation that the Defendant requested counsel during the interview and therefore the interview process should have ended at that time. This Court issued a written decision and held that any ambiguity as to whether or not the Defendant wanted an attorney was resolved in the State's favor by the specific follow-up questions by the detective. The Court concluded Defendant desired to proceed with the statement without an attorney present. Defendant now argues that his attorney should have sought to have the statement suppressed as being involuntary. He argues that his attorney knew he had consumed marijuana just prior to the incident resulting in these charges and the statement given that same day. Counsel knew the Defendant was cold and was being detained in a cool or cold holding cell, and that Defendant had been promised to be let go if he gave a statement. Therefore, Defendant alleges that his attorney's performance was deficient in not seeking to suppress his statement on voluntariness grounds.

Any issue of "being cold" was resolved at the time of the statement. The tape of the statement evidences the Defendant's complaint that he was cold, but it also evidences that the detective took note of Defendant's concerns and was cognizant that the complaint be addressed independent of Defendant's decision on whether he wished to talk with the detective. Being cold was not a voluntariness issue.

As to being under the influence of marijuana at the time of the statement, the Defendant's attorney testified he specifically inquired as to his client's drug use or being under the influence of drugs. The Defendant denied any drug use. Defense counsel testified that the first he learned of the alleged

drug consumption was when he read the Rule 61 Motion. I find defense counsel's recollection to be more credible. The police detective testified Defendant didn't appear to be under the influence of marijuana. The tape of the Defendant's statement does not support a claim of involuntariness based upon the allegation that he was under the influence of marijuana. The Defendant is focused and alert. There is no basis to conclude the Defendant's statement was involuntary due to marijuana consumption.

Defense counsel testified Mr. Warrington told him the police stated he could go home after he gave a statement, but defense counsel concluded an attack based on voluntariness didn't have legs. I agree. The tape of the statement evidences that the Defendant voluntarily talked with the detective. It evidences the detective's concern about the Defendant's comments about being cold as well as clearing up any ambivalence expressed by the Defendant as to whether the Defendant wanted to talk with the detective. Both detectives deny they told the Defendant he could go home if or after he gave a statement. The Defendant then testified it must have been another police officer.

Both testified that they are homicide detectives and their practice is to make sure they capture all communications with a suspect on tape. Detective Evans testified he didn't think either he or Detective Hudson accompanied the Defendant from the cell block to the interview room. Thus, a real fact issue remains as to whether this comment by the police occurred, but even if such a comment was made, it doesn't automatically mean there is a basis for suppressing the statement. Defendant must establish his will was overborne by the police conduct.

The standard for determining voluntariness is if the "behavior of the interrogators was such as to overbear the will of the interrogated to resist and bring about a statement not 'the product of rational intellect and a free will' without regard to the truthfulness or reliability of the statements". State v. Rooks, 401 A.2d 943 (Del. 1979) at 948 quoting Rogers v. Richmond, 365 U. S. 534 (1961). Based upon this standard and a review of the tape of the statement, Defendant has not established any deficient

performance as to his allegation that his attorney should have also attempted to suppress his statement on voluntariness grounds. Could the attorney have raised this? Yes, but when considering the evidence of the videotape and the demeanor of both the detective and the Defendant, I do not find counsel deficient for not seeking suppression as to voluntariness. Trial counsel considered the "right to counsel" argument as his best shot at suppressing the statement. When such judgments are made, the Courts shall be reluctant to second guess counsel's tactics.

Nor has he established prejudice in that he has not shown that had such a motion been filed, it would have been granted. To the contrary, after hearing the Defendant's testimony, the detectives' testimony and considering the statement itself, I find I would not have suppressed the statement on the basis it was involuntary. This claim is denied.

CLAIM #2 - SWEATSHIRT MIX-UP

Defendant alleges that the medical technicians called to the scene "mixed up" the sweatshirts that Robert Warrington and Andrew Warrington were wearing. He argues his attorney was ineffective in his pretrial investigation for not being aware of the "mix up". He argues this is relevant because there was blood on the back of the sweatshirt he was wearing, and that would have been relevant to his claim that he was the one who made the 911 call, not the victim.

This was a fact issue that was raised at trial and necessarily resolved by the jury. When trial counsel learned of Defendant's allegation that the sweatshirts had been mixed up is not as important as the fact that at trial, he was aware of it and this issue was thoroughly explored by trial counsel. Therefore, the Defendant can claim no prejudice. There is no basis for an ineffective assistance claim under these facts where it was the jury's decision as to whether or not there had been a mix-up; and if there was a mix-up, what was the relevance and weight of same.

I note that Mr. Warrington's claim that he made the 911 call is not at all credible. If he made

the 911 call, then the deceit, shock and consternation shown by him upon getting the return call from the 911 operator is unexplainable. Immediately following Peco's death, Mr. Warrington hung the phone up or broke the 911 connection. The 911 operator immediately called back. When asked what was happening, Mr. Warrington reported his brother was kidding around. He didn't report a home invasion and the death of the intruder. If he had made the call, why should he have been so deceptive? When Mr. Warrington then realized the 911 operator had heard what had taken place, his panic is obvious.

Defendant claims trial counsel was ineffective for not having blood testing done on the black sweatshirt he claims to have been wearing. This argument is not developed by the Defendant and it consists of a single sentence. I expect the Defendant is saying if blood was on the back of the shirt he was wearing, then it would support his argument that he was in the bedroom with his back to the door, and it was the victim that broke in. The large blood stains found on the door supported the inference that someone was using their back against the door to keep the door closed. The physical evidence supports Jesse Peco as wearing clothing which was sufficiently bloody so as to leave a large blood stain on the door.

Further, defense counsel testified that blood testing was never considered because of the Defendant's version of what occurred and the chronological order of those events. What little blood that might have gotten on the back of the Defendant's shirt and when it was transferred would not have warranted testing the shirt. Everyone knew there was an abundance of blood and it was the victim's.

As aforestated, who was wearing what shirt was explored by the defense and the State. The jury heard the Defendant's theory that he was the one with his back to the door. Regardless of any blood being on the shirt, the jury heard both sides. The jury also had the black sweatshirt to review as it was a trial exhibit. Additionally, as a result of this claim, the Court has examined the sweatshirt and the

"stains" on it do not support Defendant's allegation of a large blood transfer from his shirt to the door.

The timeline of events establishes that the Defendant's version of events is not credible. The evidence strongly supports the victim seeking refuge in the bedroom, trying to make a 911 call as the door was forcibly broken down by the Defendants. It supports the Defendant not having any knowledge of the 911 call until the 911 operator called back.

Finally, the Defendant doesn't offer any theory as to how testing the shirt for blood would support his theory that he was the one who sought refuge in the bedroom. It's conclusory. To have had an expert testify there was blood on Defendant's clothing would not have been surprising and would not have put the verdict in question. Thus Defendant fails to establish prejudice.

Defendant fails to establish deficient performance and prejudice. The claim is denied.

CLAIM #4 - PSYCHIATRIC EVIDENCE

Defendant claims trial counsel was ineffective for failing to call an expert psychiatric witness at trial, or to have an expert prepare a "social history", which Defendant argues would have bolstered his self-defense argument. Self defense does focus on the Defendant's state of mind or belief at the time the Defendant commits an alleged criminal act. Defendant offers nothing as to what an expert would have offered to assist the jury. Defendant testified as to his state of mind and belief. The Defendant's brother corroborated their story.

Trial counsel testified he did consult with an expert, but after discussing the issue of the Defendant's state of mind, it was decided the Defendant would be his own best witness. In other words, considering the resources available, there was a decision that retaining an expert as to the Defendant's state of mind was not justified under the known evidence.

Finally, there is nothing in the Rule 61 to support the allegation that such an expert would have supported the Defendant's present allegations and made a difference at trial. The only proffer is the

Defendant's allegation that an expert would have helped.

This claim fails.

CLAIM #5 - FINGERPRINT EVIDENCE

Defendant claims trial counsel was ineffective for failing to obtain an independent fingerprint expert. He alleges this would have been important to substantiate his claim that he made the 911 call as opposed to the victim. This was a fact issue at trial. The State presented its expert witnesses and the Defendants thoroughly cross-examined those experts. The fingerprint expert testified a single print was located on the portable telephone. Based on the identifying points found, the Defendants were excluded. The victim was not excluded because the examiner did not have sufficient prints of Mr. Peco in order to make a proper comparison. For the same reason, the expert testified he couldn't match the print to the victim. Issues such as whether or not prints could be matched to either of the Defendants or matched to the victim were explored. Robert Warrington's present allegation that there was ineffective assistance of counsel because no independent fingerprint expert was hired is a conclusory allegation. He offers nothing to support his claim that if a defense expert were involved, that expert could offer anything favorable to the defense which could put the jury's verdict in doubt. There is nothing offered to question the State's expert that neither Defendant made the print found on the phone. At the Rule 61 hearing his trial attorney testified, based on what he knew, he couldn't see how such an expert would have helped. I agree. This claim is denied as neither deficient performance has been shown for not obtaining a defense fingerprint expert nor has there been a showing that such an expert would have supported Defendant's present allegations.

CLAIM #6 - THE 911 TAPE (AUTHENTICITY)

It is claimed that counsel was ineffective for not having the 911 tape transcribed by an independent expert. Defense counsel testified he had the tape digitally enhanced and spent many hours

reviewing it and the transcript of the tape. Implicit in the claim is that somehow the 911 transcript was inaccurate. Defendant has not established that. Additionally, I note that Andrew Warrington's attorney moved to suppress the 911 tape and transcript of same. After making their own defense inquiry, that suppression application was withdrawn as they had no basis to allege tampering. This conclusory claim is denied.

CLAIM #7 - THE 911 TAPE (INFLAMMATORY)

Counsel is alleged to be ineffective for not objecting to the admission of the 911 tape as being inflammatory. Even if defense counsel had objected, the tape would have been admitted. The 911 tape accurately evidenced what took place at the scene of this homicide. It was chilling, but in no sense was it prejudicially inflammatory under D.R.E. 403. The Defendant has not established deficient performance or prejudice. This claim is denied.

CLAIM #8 - NO PLEA BARGAIN

It is alleged that counsel was ineffective for failing to seek a plea bargain. Trial counsel testified there were plea discussions but they didn't bear fruit as to anything acceptable to the Defendant. I do not find that counsel failed to explore resolution of the charges by way of plea negotiations. Therefore this claim is denied.

CLAIM #9 - FRIENDLY RELATIONS WITH INVESTIGATOR

The Defendant alleges that his trial attorney told him that he was good friends with the investigating detective. He alleges that this created a conflict of interest and that his attorney's working relationship with the prosecution interfered in the attorney's obligation to provide a zealous defense. Trial counsel denies these specific allegations, but did testify he told the Defendant he knew the detective. Both trial counsel and the detective testified that they knew each other in high school. Detective Hudson graduated before trial counsel graduated, approximately 20 years ago. They haven't

socialized since then. The knowledge of each other's cell phone numbers was based on exchanging same when arrangements were made for the Defendant to turn himself in. There has been no showing that trial counsel and the police officer were friends, much less that any friendship caused Defendant prejudice. This claim is denied.

CLAIM #10 - COLD-BLOODED MURDERS

Defendant alleges that the comment by the prosecutor in his opening statement that the co-Defendants were "cold-blooded killers" was highly prejudicial and that his attorney was ineffective for failing to object to the prosecutor's comment. I do not find that the attorney was ineffective for not objecting to the statement. When taken in context, the use of "cold-blooded killers" was a part of the state's opening concerning the 911 tape. It was made in the context that the evidence would show the victim was helpless, begging for his life, but the only thing that was forthcoming was further violence inflicted upon the victim with the knowledge such violence was causing death. In light of that context, the use of "cold-blooded killers" to show an intent to kill was not inappropriate. "Cold-blooded" means lack of feeling or emotion. I note that the Court reached the same conclusion at sentencing. Nor has the Defendant shown how he was prejudiced by the use of the term "cold-blooded killers". The jury was instructed that the lawyers were not witnesses and that any personal opinions they may have offered should not be considered. This claim is denied.

CLAIM #11 - TATTOO

The Defendant argues his attorney should have objected to photos of his tattoo. The evidence doesn't support the allegation that Robert Warrington's tattoo was in any way exhibited to the jury. Assuming it was, the Defendant does not offer any explanation as to how his tattoo of a dragonhead would have been prejudicial. There is nothing inherently prejudicial about his tattoo. This claim fails as it is no allegation of deficient performance nor is it showing any prejudice.

CLAIM #12 - COACHING

The Defendant argues that there was coaching by a prosecutor of a witness concerning whether Andrew Warrington was wearing the black sweatshirt or whether Robert Warrington was wearing the black sweatshirt. Defendant has no evidence to support such a claim. His trial counsel testified that if this had occurred, it would have surely been brought to the Court's attention. This conclusory claim fails.

CLAIM #13 - Defendant'S PRIOR DRUG INVOLVEMENT

Defendant argues that his attorney was ineffective for asking him about prior criminal conduct that may have been otherwise inadmissible. The evidence shows that during the Defendant's direct testimony, he testified about an arrest in Florida. Trial Counsel testified that it was necessary to paint the entire picture of Defendant's background. The defense had an uphill struggle to explain Defendant's dishonest statement to the police. To leave out something that may have possibly been raised in cross-examination, would have had a negative impact as to the Defendant's attempt to be credible in the jury's eyes. In these circumstances, I cannot fault defense counsel for trying to "take the wind out of the sails" of the prosecution. Defense counsel wanted the jury to form the opinion his client was being honest and he didn't want the appearance that he was holding anything back. In view of this, I do not find trial counsel's advice to his client to include the Florida arrest to be ineffective assistance of counsel. Nor do I find any prejudice. To provide the jury with the background of why this case occurred and why he was not guilty he testified fully as to using and selling drugs. Therefore, as a trial strategy, it was necessary for the Defendant to acknowledge prior criminal conduct. The Florida arrest pales when compared to the drug activity occurring in Delaware. This testimony was necessary to establish why the Defendant owed the victim money and why he feared the victim. This claim is denied.

CLAIM #14 - FAILED TO OBJECT TO STATE'S VIGOROUS
CROSS-EXAMINATION OF THE DEFENDANT

Defendant complains that his attorney was not aggressive enough in objecting to the prosecutor's cross-examination of him. To support this he states that the Court intervened at times and it should have been the defense attorney who intervened.

If the opposing attorney is trying to make a point through cross-examination and there is an objection, then it may appear to the jury that defense attorney is trying to interrupt that questioning or protect his client. I don't find trial counsel was ineffective for not making objections. When to object and over what issues is best left to trial counsel.

A judge is permitted to control the proceedings. If questioning becomes cumulative and we are simply replowing old ground, it is within the discretion of the Court to get the parties to move along. Argumentative questions are likewise ripe for a judicial intervention. Just because a judge intervenes does not mean a lawyer is not doing his or her job.

Finally, there has been no showing of prejudice. This is not a situation that a missed objection caused prejudice to the Defendant. This ground is denied.

CLAIM #15

_____The Defendant alleges that his attorney failed to cross-examine one of the detectives about "circumstances of the statement, or why the Defendants were released, or anything relevant due to being friends with the detective." This claim combines two earlier claims that a suppression application based upon an involuntary statement should have been made by trial counsel, together with the allegation that it was his attorney's friendship with the detective that caused him not to raise the issue. I have previously found no merit in these claims.

The Defendant offers nothing as to what would have been obtained had cross-examination been conducted in a different fashion. In fact, at the evidentiary hearing, the detective testified that both

Warringtons were released, but that he wanted to arrest them instead. The detective testified it was the prosecutor who made the decision to release the Defendants as the prosecutor wanted further investigation. Therefore, I find that trial counsel was not deficient and I find there exists no prejudice as to this claim. It is dismissed.

CLAIM #16

The Defendant alleges that trial counsel failed to call witnesses which were prepared to testify as to the victim's reputation for violence.

Trial counsel testified the defense did raise the victim's prior violence as a justification for the use of self-defense. But trial counsel testified there were witnesses he chose not to call because of their opinion that the victim was basically all bark and no bite. He was concerned this would erode Defendant's testimony that there was real reason to fear the victim. Counsel didn't ignore these witnesses. He interviewed them and determined how helpful they might be and whether the benefit outweighed the risk of their testimony. There is no basis to conclude trial counsel was deficient in not calling those witnesses nor has the Defendant offered anything to establish prejudice. The Defendant has not made any specific proffer nor does he have anything from any prospective witness that would be helpful to the position he now takes. In other words, his claims of prejudice are conclusory. This claim is denied.

CLAIM #17 - MARIJUANA

_____ Defendant alleges that trial counsel promoted Defendant to lie by omission about not mentioning he smoked marijuana prior to the homicide and about trial counsel's "best friend relationship" with the detective. Defendant argues that trial counsel told Defendant not to tell anybody he was on marijuana during the incident during his statement. Trial counsel denies these allegations and testified he asked the Defendant about drug usage prior to the homicide and the Defendant denied any

consumption of drugs. He also testified that there was no basis at all to the "best friend" allegations. I find that the Defendant has not established that his attorney directed that he lie by omission. This claim is denied.

CLAIM #18

Defendant alleges the prosecutor, in closing argument, misstated the evidence as to the location of the fingerprint on the phone that was used to make the 911 call. There was testimony as to the fingerprint location and I don't find the prosecution misled the jury.

Defendant also alleges the prosecutor argued inferences that were not reasonable. The undisputed evidence was that the Defendant gave the victim a forged check for money he owed, but which needed the Defendant to cash. There was evidence that the Defendant and the victim were to meet in order to arrange for the cashing of this check. The State didn't mischaracterize the evidence or mislead the jury when it inferred it was reasonable for the victim to appear at the Defendants' house after they failed to meet as planned.

I do not find that the prosecutor's statements were a mischaracterization of the evidence. Therefore, I do not find that there was any ineffective assistance of counsel by not objecting to the prosecutor's remarks. Finally there has been no showing of prejudice. This claim is denied.

CLAIM #19

In this claim, the Defendant makes the conclusory allegation that his attorney "gave a horrible closing argument" and that his trial performance was "bad strategy". Defense attorneys must sometimes attempt to "make a silver purse out of a sow's ear", but a guilty verdict doesn't mean counsel did a poor job. It is trial counsel's responsibility to do the best job he can and zealously defend the Defendant. I do not find that these allegations rise to the level of a specific claim of deficient performance. I do not find the Defendant has established any prejudice. Just saying the word "prejudice" is insufficient.

This claim is denied.

CLAIM #20

_____In this claim, the Defendant argues the sum total of all the deficiencies of his attorney prejudiced him. Since I have not found any trial error or deficient performance by Defendant's attorney which prejudiced him the sum of the total is zero and therefore this claim is denied.

CLAIM #21 - INSUFFICIENT EVIDENCE

Defendant alleges there was insufficient evidence to support a claim of murder in the first degree. Specifically, he alleges that the prosecution failed to establish his intent to kill. As to an intent to kill, the physical evidence is overwhelming that this incident, fight, or whatever, was one-sided. Each Defendant had one small cut. Mr. Peco had 8 blunt force injuries to his head. Mr. Peco had 25 knife wounds, 13 of which were determined to be stab wounds. He had numerous defensive wounds on his hands. The 911 tape is devastating proof. The Defendants were convicted based on the live recording of this homicide. The evidence and reasonable inferences offered are ample proof of the Defendant's intent to cause Mr. Peco's death. This claim fails.

CLAIM #22 - FAULTY JURY INSTRUCTIONS

This claim alleges that the self-defense instructions were faulty. The self-defense instructions were the subject of the appeal and therefore there has been a prior adjudication of this issue. This claim is procedurally barred under Rule 61(i). As to that portion of this allegation alleging the instructions resulted in the burden of proof being shifted to the defense, the Defendant is factually incorrect. The instructions make it clear that if self defense raises any reasonable doubt, the Defendant must be given the benefit of that doubt. In other words, the Defendant is not required to prove self defense. The instruction didn't cause the burden of proof to be shifted to the Defendant. This claim fails.

CLAIM #23 - INEFFECTIVE ASSISTANCE OF COUNSEL -
APPELLATE COUNSEL

Defendant claims that his appellate counsel failed to conduct the appeal to the best of his ability, alleging that he should have raised all of the aforementioned grounds included in this Rule 61. Based upon the rulings in this present application, I do not find appellate counsel to have been deficient for not raising the issues contained herein.

CLAIM #24

The Defendant complains that he was denied copies of the trial transcripts until months after the conviction was affirmed. This claim doesn't attack his conviction.

Defendant makes no claim as to how this claim has prevented him from prosecuting his present motion. It would appear that Defendant has exhaustively reviewed all alleged errors and deficiencies that he feels contributed to his conviction. This claim is dismissed.

CLAIM #25

The Defendant argues that the Court should have granted a change of venue. There is nothing to support this allegation. There is nothing shown by the Defendant which warrants a change in venue to Kent County or New Castle County. The complaint that there were efforts by the victim's family and/or supporters to influence a verdict by leaflets or picketing would not have been eliminated by a change in venue. Such issues may arise wherever the trial takes place and must be addressed by the Court as they were in this case. Additionally, the Court regularly inquired of the jury as to whether they had been exposed to anything that might impact their ability to remain fair and impartial. This claim is denied.

CONCLUSION

The Defendant's Motion for Postconviction Relief is denied.

Yours very truly,

T. Henley Graves

THG:baj

cc: James W. Adkins, Esquire
Adam D. Gelof, Esquire
David M. Hume, Esquire
Ronald D. Phillips, Esquire